IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRI. REV. APPLICATION NO. 403 OF 2004

Ajit Ramgonda Patil. ..Petitioner/Applicant.
V/s.

The State of Maharashtra .. Respondent.

Shri Kuldip S. Patil for Applicant.
Shri V.B. Konde-Deshmukh, APP for Respondent.

CORAM : A.M.KHANWILKAR, J.
DATED : 27.10.2004

PC :-

. Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith. By consent of the parties taken up for final hearing. Shri Konde-Deshmukh, APP waives service for Respondent.

3. The applicant was tried for the offence punishable under sections 409 and 468 of the IPC. He pleaded guilty at the trial. The trial court accordingly convicted the applicant for that offence and sentenced him to suffer rigorous imprisonment for one month and to pay fine of Rs. 5000/-. The applicant carried the matter in appeal on the question

of sentence. In the appeal, however, it was contended that section 409 will not be attracted, as the applicant already made good the mis-appropriated amount by depositing the same before the case was registered against him. That plea has been rejected by the courts below and,in my opinion,rightly. In the circumstances, the appellate court confirmed the order passed by the trial court.

4. In this revision application, the applicant merely questions the correctness of the decision of the courts below on the point of sentence. It is submitted that the applicant has already paid the entire amount much before the case was registered against him. Besides, he has appeared before the court with clean breast and admitted his guilt. He did not contest the proceedings. The learned counsel points out that the applicant has already undergone three days punishment besides paying the fine amount of Rs. 5,000/-, as directed by the court below.

5. The learned APP on the other hand submits that no indulgence be shown to the applicant and if at all the sentence is to be reduced, the fine amount be increased to Rs. 10,000/-. Counsel for the applicant

submits that the applicant is willing to suffer further fine of Rs.5000/- in addition to Rs. 5000/- already imposed by the courts below which has been deposited.

6. Taking overall view of the matter, in the peculiar facts and circumstances of the case, coupled with the fact that the applicant has already lost his job, the sentence imposed by the courts below is reduced to 7 days and the fine amount is increased to Rs. 10,000/-. The applicant shall forthwith surrender to undergo the remaining sentence and also pay fine of additional amount of Rs. 5000/- (Rs. Five thousand only), in default to suffer rigorous imprisonment for two months. Applicant would get set-of of the sentence already under gone.

7. Parties to act on an authenticated copy of this order.

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